

Message Text

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SUBJ: REACTION TO DESCHENES RULING ON QUEBEC'S LANGUAGE LAW

REF: MONTREAL 167

1. SHOULD THE DESCHENES RULING ON THE UNCONSTITUTIONALITY OF PORTIONS OF QUEBEC'S LANGUAGE LAW BE UPHELD IN THE HIGHER COURTS IT WILL PROVE THAT THE CANADIAN CONSTITUTION WILL NOT PERMIT THE "NORMAL AND NATURAL EVOLUTION OF QUEBEC'S SOCIETY," BILL 101 GODFATHER CAMILLE LAURIN SAID YESTERDAY. "IF THE CONSTITUTION OF CANADA DOES NOT PERMIT THIS MINIMUM OF DIGNITY AND NORMALITY," LAURIN CONTINUED, "THEN IT IS THE CONSTITUTION ITSELF WHICH IS ABNORMAL AND OUTDATED."

2. LAURIN'S STATEMENT ENDED A DAY- LONG PERIOD OF OFFICIAL SILENCE ON THE DESCHENES RULING DURING WHICH THE GOVERNMENT CONFINED ITSELF TO JUSTICE MINISTER MARC-ANDRE BEDARD'S TERSE STATEMENT THAT THE GOVERNMENT WOULD APPEAL THE CASE TO THE QUEBEC APPEALS COURT. PRIME MINISTER LEVESQUE HAS, AT THIS WRITING, NOT YET COMMENTED ON THE ISSUE.

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3. IN AFFIRMING HIS BELIEF IN THE CONSTITUTIONALITY OF THE LANGUAGE LAW, LAURIN POINTED OUT THAT ENGLISH RIGHTS IN QUEBEC, EVEN UNDER BILL 101, ARE PROTECTED FAR BETTER THAN ARE FRENCH RIGHTS IN OTHER PROVINCES. THE LAW PERMITS INDIVIDUALS TO TESTIFY IN ENGLISH; CASES INVOLVING CORPORATIONS MAY ALSO BE CONDUCTED IN ENGLISH IF ALL PARTIES AGREE. THESE PROVISIONS, LAURIN SAID, ARE "GENEROUS" IN COMPARISON WITH THE TREATMENT

ACCORDED FRANCOPHONES OUTSIDE QUEBEC.

4. NATIONAL ASSEMBLY PRESIDENT CLEMENT RICHARD ADDED A CRUCIAL NEW DIMENSION TO THE CONTROVERSY YESTERDAY. AT A NEWS CONFERENCE CALLED TO DISCUSS THE TOUCHY QUESTION OF THE CONSTITUTIONALITY, IN LIGHT OF THE DESCHENES RULING, OF BILL 101 AS A WHOLE AND OF ALL SUBSEQUENT LEGISLATION PASSED BY THE NATIONAL ASSEMBLY (SEE REFTTEL) RICHARD REVEALED THAT QUEBEC LIEUTENANT GOVERNOR HUGUES LAPOINTE, FOR UNEXPLAINED REASONS, HAD ACCORDED OFFICIAL SANCTION ONLY TO THE FRENCH VERSION OF BILL 101 AND NOT THE ENGLISH VERSION. IT IS THEREFORE POSSIBLE THAT BILL 101 AND SUBSEQUENT LEGISLATION PASSED ONLY IN FRENCH DO NOT HAVE, AND NEVER DID HAVE, LEGAL STATUS. LAPOINTE'S REFUSAL TO SANCTION THE BILL RAISES THE POSSIBILITY OF A CONSTITUTIONAL CONFRONTATION BETWEEN THE PROVINCIAL GOVERNMENT AND THE QUEEN'S REPRESENTATIVE IN THE PROVINCE.

5. THE GOVERNMENT IS OF COURSE HOLDING TO THE POSITION THAT THE DESCHENES RULING IS NOT RETROACTIVE AND THAT THE REMAINING PROVISIONS OF BILL 101 AND SUBSEQUENT LEGISLATION ARE NOT AFFECTED AND CONTINUE TO HAVE THE FORCE OF LAW.

6. COMMENT: FROM WHAT WE CAN GATHER HERE, THE ASSUMPTION WIDELY TRUMPETED IN YESTERDAY'S ANGLOPHONE PRESS THAT DESCHENES' RULING IS LIKELY TO BE UPHELD IN HIGHER COURTS IS BY NO MEANS A FOREGONE CONCLUSION. A SIGNIFICANT NUMBER OF CONSTITUTIONAL UNCLASSIFIED

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EXPERTS, PRIMARILY FRANCOPHONE, BELIEVE THAT UNDER ARTICLE 92 OF THE BRITISH NORTH AMERICA ACT A PROVINCE HAS THE POWER TO AMEND ITS OWN CONSTITUTION IN VIRTUALLY EVERY RESPECT, INCLUDING THE APPLICATION OF ARTICLE 133 OF THE BNA ACT, THE ARTICLE CITED BY JUDGE DESCHENES.

7. ON THE QUESTION OF THE APPLICATION OF THE DESCHENES RULING TO THE REST OF BILL 101 AND SUBSEQUENT LEGISLATION, IT IS LIKELY THAT JUDGE DESCHENE HIMSELF WILL HAVE TO CLARIFY HIS RULING.

8. REGARDLESS OF THE LEGAL ARGUMENTS, THE FEELING HERE IS THAT THE PQ STAND TO GAIN FROM THE RULING. POLLS HAVE SHOWN THAT BILL 101 IS A GENERALLY POPULAR MEASURE AMONG FRANCOPHONES IN THE PROVINCE. IF HIGHER COURTS UPHOLD DESCHENES' DECISION, THE PQ WILL BE ABLE TO ARGUE THAT, ON THE GUT ISSUE OF THE SURVIVAL OF THE FRENCH-CANADIAN IDENTITY AND CULTURE, THE BNA ACT STANDS IN THE WAY. THIS IS, OF COURSE, A POSITION LONG HELD BE THE PQ. IF, ON THE OTHER HAND, DESCHENE'S RULING IS OVERTURNED, THE LANGUAGE LAW WILL BE VINDICATED. ALTHOUGH WE DON'T KNOW THE EXTENT TO WHICH THE PEQUISTES WERE PREPARED FOR DESCHENES' DECISION, IT IS LIKELY THAT THEY WELCOME THE CONFRON-

TATION. ANYTHING TO DISTRACT ATTENTION FROM THE ECONOMIC
SITUATION, WE SUSPECT, CAN ONLY BE VIEWED AS A PLUS BY THE PQ.
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